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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2485 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and

Hon'ble MR.JUSTICE A.L.DAVE

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

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2. To be referred to the Reporter or not? No.

3. Whether Their Lordships wish to see the fair copy
of the judgement? No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge? No.

STATE OF GUJARAT(THROUGH D K TRIVEDI , JMFC, VADODARA.)

Versus

D G ASWAR, POLICE INSPECTOR

Appearance:

Mr. A..P. Desai A.P.P. for Petitioner
MR KB ANANDJIWALA for Respondent No. 1
Mr.K.B.Pande for Respondent No. 3, 4

CORAM : MR.JUSTICE C.K.THAKKER and

Date of decision: 25/11/98

ORAL JUDGEMENT (Per: Thakker-J)

This is a reference made under sub-section (2) of Section 15 of the Contempt of Courts Act 1971 (hereinafter referred to as "the Act") by the Judicial Magistrate (F.C), Vadodara on April 23,1998.

2. In the reference it was stated that one FIR being CR-I/119/97 was filed against 12 accused persons for offences punishable under sections 395 and 397 of the Indian Penal Code. The said FIR was lodged at Chhani Police Station of Vadodra City on June 22,1997 at 4.30 p.m. in connection with an incident alleged to have taken place at about 13.00 hours early in the morning on 19.6.97. Since the proceedings are pending , we do not propose to enter into further in the matter. It was the case of the accused that they were produced before the learned JMFC, Vadodara, Court no.4 on 24.6.97 and remand was prayed. It was granted upto June 30,1997. On June 30, 1998 when the accused, particularly accused no.9 Sureshbhai Patel was produced before the Court, he was hand cuffed. Since the action was contrary to law and inconsistent with the decision of the Honourable Supreme Court in Citizens for Democracy through its President vs. State of Assam & ors. 37(1) GLR 682(SC), a purshis was filed by Deveshbhai Patel advocate appearing for accused no.9 Sureshbhai Patel. It was stated therein that accused no.9 was produced in hand cuffed position . On the same day, an order was passed by the learned Magistrate that in spite of the judgment of the Supreme Court the police had produced the accused in hand cuffed position and thereby they had committed contempt of Court. Proceedings should, therefore, should be initiated under the Contempt of Courts Act. On the same day, i.e. June 30,1997, a notice was issued (Annexure-D) to the present proceedings in which the following persons were called upon to show cause as to why proceedings under the Contempt of Courts Act should not be initiated against them:

1. D.G.Aswar, Police Inspector
2. J.T.Rana, P.S.I.
3. Dinubhai Bababhai, Head Constable.
4. Shankerbhai Jivabhai, Police Constable.

3. In pursuance of the notice issued by the Court, a reply was filed by P.I. Aswar on July 25,1997

(Annexure-E) in which it was stated that in connection with CR.-I/119/97, accused were arrested. It was further stated in that Sureshbhai and other persons were also involved in other offences in Gujarat as well as in Maharashtra. Considering the seriousness of the offences and in view of the fact that the accused were involved in certain offences which took place in the State of Maharashtra and that the accused Sureshbhai was instigating other accused and there was reasonable apprehension that they may abscond in which case there might be proceedings against the police personnel and in view of the fact that there were twelve accused persons and police personnel were less and that the police constables had no knowledge of law and they were ignorant about the decision of the Honourable Supreme Court if any accused persons was produced in hand cuffed position there was no intention on the part of the police officials against whom notices were issued to commit Contempt of the Court. It was therefore, submitted that considering all the facts and circumstances including seriousness of the offences in which the accused persons were involved, even if the Court was of the opinion that there was some mistake in the part of the accused, he may be pardoned and the notice issued against him in respect to of the alleged Act under the Contempt of Courts Act may be discharged. Similar reply was filed by Dinubhai Bababhai, Head Constable and Shankerbhai Jivabhai Police Constable at Annexure F and G respectively. Both of them have stated that a big crowd was there near the court house and they apprehended that in such situation, the accused persons may abscond and therefore, the accused was produced in the court in hand cuffed position. They have also prayed to forgive them. So far as J.T.Rana, P.S.I. is concerned, in the reply he stated that he was not concerned with the investigation of Cr.I/119 of 1997 as the investigating officer was P.I., Aswar. He was present in the court, but not in connection with CR-I/119 of 1997 but in other offence. He therefore, stated that he had not committed any illegality and that the notice may be discharged against him. It appears that an affidavit in reply was filed by Sureshbhai Patel at exh.21 on September 22,1997. In the said affidavit, he has stated that ill-treatment was given by the police personnel to him and to some other accused persons. He alleged that that only with a view to damage his political career and reputation that the action was taken. He had not committed any offence. Police personnel had committed Contempt of Court act. To the said reply an affidavit was filed by Mr. Aswar and strong reliance was placed by Mr. Pande learned counsel on the said reply, wherein he had denied all the averments. It was

stated by Mr.Pande that police personnel had not come with clean hands. He had denied all the averments in the affidavit. Relying on certain decision of the Supreme Court it was submitted that if the court is satisfied that the apology tendered by the contemner is not sincere and candid and has been done only with a view to avoid punishment which is likely to be inflicted upon him, it is the duty of the court not to accept such apology.

4. The learned JMFC considered the said reply submitted by the contemner. In view of the judgment of the Supreme Court, he made a reference to this Court.

5. We have heard Mr. K.B. Anandjiwala for contemner, Mr. K.B. Pande learned counsel for Sureshbhai Patel and Mr. A.P.Desai, learned A.P.P. for the State.

6. Mr. Anandjiwala submitted that as soon as proceedings were initiated by the learned JMFC at the first available opportunity, all the officials against whom notices were issued came with sincere apology pointing out the facts and circumstances under which the action was taken. It was also stated that they have considered the fact there were 12 accused persons, many complaints were filed against them, that several persons were also collected near the court house, the police personnel were few in number. If, in these circumstances, a mistake was committed then and there was some default on the part of the police officers and as soon as notice was issued to them, they realised that it was a mistake committed by them for which they had tendered unconditional apology by requesting the court to discharge the notice, it cannot be said that the court would not accept said apology and continue the proceedings under the Contempt of Courts Act.

7. Mr. Anandjiwala also placed reliance upon an affidavit filed in this court by all the contemnors. Mr. Aswar, in his affidavit to this court in paras 2,3 and 4 stated:

"2. At the outset, I submit that I am a policeman and as a policeman I am a law abiding citizen. I have utmost respect and honour for all courts of law and justice and I cannot even think for a moment or for a minute of committing any contempt of the court or showing disrespect towards the court. It is true that there has

been some lapse on my part as a superior officer of the police station in not properly instructing the two police constables Shankerbhai Jivabhai and Dinubhai Gababhai with regard to as to under what circumstances a prisoner is to be handcuffed. On the day when the accused persons who were twelve in numbers were to be produced before the learned J.M.F.C. Vadodara as the time period of remand was expiring there was shortage of police staff and therefore, I had to depute police constable Dinubhai Gababhai and Police Constable Shankerbhai Jivabhai to take and produce the accused persons before the learned J.M.F.C. I had made them aware that the accused persons are all hard-core criminals who have been arrested in offence of decoity and therefore, both the Police Constables should be more vigilant and careful while producing the accused persons before the learned JMFC, Vadodara. I submit that the circumstances in the Court premises were such that the two police constables as of abundant caution though it fit to handcuff some of the accused persons. The Hon'ble Court may believe me that this handcuffing was not done intentionally or wilfully with a view to flout the directive of the Hon'ble Supreme Court. It is true that as a superior I should have warned both the Police Constables that in case if necessity demands of handcuffing the accused person then permission of the Magistrate may be obtained. I have explained in my reply putforward before the JMFC, Vadodara to the show cause notice dated 30.6.1997 as to how I could not be given pray for the permission of the Magistrate to handcuff some of the accused persons.

3. I assure, this Hon'ble Court that I shall be more vigilant and careful from now onwards and I also assure that I shall not give any chance of any such complaint in future. I submit that I am extremely sorry for the same and I hereby tender my unconditional unqualified and sincere apology [for the same. I pray that my sincere apology may be accepted and I may be pardoned for the first and the last time.
4. I submit that in my reply putforward before the learned JMFC, Vadodara to the show cause notice dated 30.6.1997 I have explained exhaustively the circumstances under which the

accused persons were handcuffed. At the very first instance in this reply I have tendered my unconditional apology to the Hon'ble Judicial Magistrate, First Class, Vadodara. I once again pray that my apology may be accepted and the notice served upon me may be discharged."

Similarly Mr. J.T.Rana has stated in paras 2,3 and 4 of his affidavit as under:

"2. At the outset I submit that I am a policeman and as a Policeman I am a law abiding citizen. I have utmost respect and honour for all Courts of law and justice and I cannot even think for a minute of committing any contempt of the court or disrespect towards the court. I submit that as a matter of fact I am not all incharge of the investigation of Crime Register No. I-119/97 registered at Chhani Police Station. On the day when the accused persons of the above referred Cr.R.Number were produced before the J.M.F.C, Vadodara as the remand period was getting over, I happened to be in the court incidentally in connection with one another matter. It is true that the two police constables who were incharge of the accused persons and who were assigned the job of producing them before the learned JMFC, Vadodara had handcuffed some of the accused persons while producing them before the learned JMFC. It is true that as a superior officer of the two police constables I should have made them fully aware about the directives issued by the Hon'ble Supreme Court with regard to handcuffing of a prisoner and in case of acute necessity seeking permission of the learned Magistrate for handcuffing the accused persons. However, I assure the Hon'ble Court and the Hon'ble Court may believe me that the handcuffing of some of the accused persons who are headstrong persons with past antecedents was not done intentionally or wilfully with a view to flout the directives of the Hon'ble Supreme Court.

3. I assure this Honourable Court that in future I shall be more vigilant and careful with my subordinates and I shall not give any chance of any such complaint in future. I submit that I am extremely sorry for the same and I hereby tender my unconditional apology for the same. I pray that I may be pardoned for the first and the last time.

4. I submit that in my reply dated 8.9.1997 putforward before the JMFC, Vadodara pursuant to the show cause notice served upon me dated 30.6.1997 I have explained the circumstances and my case regarding the same. I have also filed a very exhaustive affidavit-in-reply to the affidavit filed by one of the accused persons by name Sureshbhai Zaverbhai Patel dated 20.11.1997. At the very first instance in the reply to the show cause notice I have tendered my unqualified and unconditional apology to the Hon'ble Judicial Magistrate, First Class, Vadodara"

Dinubhai Gababhai Unarmed Police Constable, has stated in paras 2 and 3 in his affidavit,

" At the out set I submit that I am a policeman and as a policeman I am a law abiding citizen. I have utmost respect and honour for all the courts of law and justice and I cannot even think for a minute of committing any contempt of the Court. It is true that there has been some lapse on my part when I had to in company of another police constable Shankerbhai Jivabhai, handcuff some of the accused persons while producing them before the Judicial Magistrate, First Class, Vadodara in connection with C.R.No. 119/97 of Chhani Police Station. The Hon'ble Court may believe me that this handcuffing was not done intentionally or wilfully with a view to flout the directives of the Hon'ble Supreme Court. I submit that the circumstances were such that I had no other option but to take precautionary measures as of abundant caution. I have now learnt that realised that I should not have hand cuffed the accused persons without the prior permission of the Magistrate. I assure this Hon'ble Court that I shall be more vigilant and careful from now onwards and I also sure that I shall not give any chance of any such complaints in future. I submit that I am extremely sorry for the same and I hereby tender my unconditional apology for the same. I pray that I may be pardoned for the first and last time.

3. I submit that in my reply dated 25.7.1997 putforward before the J.M.F.C., Vadodara pursuant to the show cause notice dated 30.6.1997 I have

explained exhaustively the circumstances under which the accused persons were handcuffed. At the very first instant in this reply I have tendered my unqualified and unconditional apology to the Hon'ble Judicial Magistrate, First Class. I once again pray that my apology may be accepted and the notice served upon me may be discharged."

Shankerbhai Jivabhai has also stated in paras 2 and 3 in his affidavit,

2. At the outset I submit that I am a policeman and as a policeman I am a law abiding citizen. I have utmost respect and honour for all courts of law and justice and I cannot even think for a minute of committing any contempt of the Court. It is true that there has been some lapse on my part when I have to in company of another police constable Dinubhai Galabhai handcuff some of the accused persons while producing them before the Judicial Magistrate, First Class, Vadodara in connection with C.R.No. 119/97 of Chhani Police Station. The Hon'ble Court may believe me that this handcuffing was not done intentionally or wilfully with a view to flout the directive of the Hon'ble Supreme Court. I submit that the circumstances were such that I had no other option but to take precautionary measures as of abundant caution. I have now learnt and realised that I should not have handcuff the accused persons without the prior permission of the Magistrate. I assure, this Hon'ble Court that I shall be more vigilant and careful from now onwards and I also assure that I shall not give any chance of any such complaints in future. I submit that I am extremely sorry for the same and I hereby tender my unconditional apology for the same. I pray that I may be pardoned for the first and last time.

3. I submit that in my reply dated 25.7.1997 putforward before the J.M.F.C. Vadodara pursuant to the show cause notice dated 30.6.1997 I have explained exhaustively the circumstances under which the accused persons were handcuffed. At the very first instant in this reply I have tendered my unqualified and unconditional apology to the Hon'ble Judicial Magistrate, First Class. I once again pray that my apology may be accepted and eighth notice served upon me may be discharged."

Mr. Anandjiwala therefore, submitted that the court may accept the unconditional apology tendered by the contemner and drop the proceedings.

7. Mr. Pande, however relied upon certain documentary evidence and contended that it was a deliberate act taken by the contemnners and they must be dealt with seriously and punished severely. He stated that over and above accused no.9 Sureshbhai, other accused were also seriously beaten and electric current was given. The so called apology was belated only to avoid consequences of illegal act and may not be accepted by this court.

8. So far as present reference is concerned it is clear that it relates only to the production of an accused in hand cuffed position which is clear from para 22 of the reference which, is as under:

" Thus considering all these facts and circumstances herein a prima-facie case of a contempt is against all the contemptners as they have disobeyed the direction of the Apex Court without any special reasons or circumstances on part of them and hence this reference is made to take Exemplary steps against the contemptners for their act of contempt and disobedience of Apex Court directions."

Ill treatment is not a part of the reference. We, therefore, express no opinion on it. Regarding production of accused in hand cuffed position it is clear from the purshis that only one accused, i.e. accused no.9 Sureshbhai was produced in hand cuffed position. As stated above, all the contemnners have clarified their position by filing affidavits before the learned JMFC as soon as the notices were issued to them. They have also filed affidavits in this court. They have tendered unconditional apology.

9. Strong reliance was placed by Mr. Pande on the affidavit filed by Mr. Aswar on November 20,1997. According to him, in the affidavit-in-reply, Mr. Aswar denied everything and hence his apology in this cannot be accepted. It is, however, necessary to note that it was an affidavit in reply filed against the affidavit exh.21 filed by Sureshbhai accused no.9. When accused no.9 was produced before the Court on June 30,1997 and a complaint was made by his advocate by filing purshis on behalf of accused no.9 immediately a note of the same was taken and

and notices were issued to the persons involved in the act. The contemnners were called upon to clarify their position. They tendered unconditional apology praying for discharge of notices issued against them. It was in reply to the affidavit at exh.21 filed by Sureshbhai that a counter affidavit was filed denying all averments which ought not to have been done. But this court can appreciate the facts and circumstances under which the police personnel were placed and that whether they had committed Contempt of Court and whether the apology tendered by them was unconditional, unqualified and sincere apology to this court and whether it can be accepted.

In the light of the facts and circumstances, of the case, in our opinion, this is a fit case in which proceedings can be dropped by accepting unconditional apology tendered by the contemnners. We therefore, accept the apology tendered by all the police officials which, in our view is unconditional, unqualified and sincere. All of them have also assured this court that this will be "the first and last chance which may be given to them. Accordingly we order that the proceedings against them be dropped. Notices stand discharged. No costs.